22 August 1955

OGC REVIEW COMPLETED

MANUFACTURE PURE Office of Security

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: Application of Crypto Security Law

1. This Office recently undertook a study of the Crypto Security Law (F.L. 513, Shat Cong., 25 U.S.C. \$ 798), with particular reference to its application to this Agency and the administrative practices and procedures of the Agency. This memorandum presents a brief analysis of certain portions of the law, together with several recommendations concerning practices of CIA and, to some extent, other agencies and departments. It should be realized, however, that the legal points are not beyond argument. That is intended here is to suggest certain steps which the Agency might be well advised to take in order to strengthen the Government's case in the event a prosecution under the Act is procedure.

2. The purpose of Section 798, which is included in the Espionage chapter of Title 18, is stated in the title of P.L. 513 as follows:

"No subspace further the security of the United States by preventing disclosures of information concerning the cryptographic systems and the communication intelligence emblyities of the United States."

The substance of the Act, set out in sub-section (a) of Section 798, is that one commits an offense who knowingly and willingly:

"semmentates, furnishes, transmits, or otherwise makes available to an unsutherized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information -

- (1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government [hereimafter referred to as CRIPTO];
- (2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes /hereinsiter referred to as CRYPTO devices and CREET devices, respectively/;

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- (3) concerning the communication intelligence activities of the United States or any foreign government [hereinafter referred to as COMINT]:
- (4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes [hereinafter referred to as COMINT]..."

Then follow several definitions, including:

The term 'classified information' means information which, at the time of a violation of this section is, for reasons of national security, specifically designated by a United States Covernment Agency for limited or restricted dissemination or distribution;

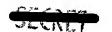
The terms 'code', 'cipher', and 'cryptographic system' include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term 'communication intelligence' means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term 'unauthorized person' means any person who, or agency which, is not authorized to receive information of the categories set forth in sub-section (a) of this section, by the Fresident, or by the head of a department or agency of the United States Government which is expressly designated by the Fresident to engage in communication intelligence activities for the United States."

## 3. Classified Information.

- (a) Section 798 affords greater protection, in its field, to the United States, with respect to the passing of information to unsuthorized persons, then do the other espionage laws (Sections 793 and 794 of Title 18) in that the intent of the accused is not significant. Under Sections 793 and 794 an intention to injure the United States, or reason to believe that the information is to be used to injure the United States or to the advantage of a foreign power, is required. Under Section 798 the accused need only have willfully and knowingly passed classified information to an unauthorized person.
- (b) Section 798 also differs from Sections 793 and 794 in the defimition of the information the passage of which involves an offense;



the latter two concern "information respecting the national defense" and "information relating to the national defense", as contrasted with information which "is, for reasons of national accurity, specifically designated by a United States Covernment agency for limited or restricted discensination or distribution". The former language was held by the Supreme Court of the United States, in Goris v. U.S. 312 U.S. 19, 61 S. Ct. 426, to involve a question of fact, that is, the jury must determine whether the acts of the defendent "are connected with or related to the national defence" (61 S. Ct. 436). Thus, in prosecutions under those sections it is necessary to prove connection with the national defence, a requirement which could be embarrassing, if applied to information classified "for reasons of national security", since in such cases the prosecution would have to submit the very information (and presumably much more) the diasonimation of which had been restricted by an agency of the Soverement "for reasons of national security".

Although it is not free from doubt, it is believed that under Section 798 it would not be necessary to submit to the jury, or to prove, the question of whether the designation "for reasons of national security" was a correct one; proof that the designation was made and that the agency which made it did so for reasons which the agency regarded as "reasons of entional security" should be all that is required. The information which is pertinent under Sections 793 and 794 is referred to in those sections by a generic term - information "respecting the national defence" or relating to the national defence". Information which is the basis of an indictment may or may not fall within the generic term; someone's opinion (the jury's) must be obtained and accepted. The phrase by which Section 798 refers to the information which is significant therounder covers information with respect to which a particular action has been taken, i.e., inforention which a government assury has specifically designated a certain way for a certain reason. The only quastion requiring an opinion by the Jury in whether such action occurred, not whether it should have occurred. Any contention to the contrary is believed refuted by the fact that its acceptance would render the statute unsuforceable in many cases, gainer security considerations doubtless would preclude the Covernment from introducing into evidence information to establish "reacons of mational security". Since the plain intent of the statute is to protect the COMINT and CRYPTC systems by ostablishing offenses and pumishments for the violation thereof, an interpretation which would defeat such intent should be avoided.

In any event, if the above analysis is incorrect, that is, if the jury would be allowed to judge whether the Agency correctly designated information for reasons of national security there appears to be nothing to be done about it except to decide, whenever a case is ready to go to trial, whether we are prepared to make available records and information to be introduced as evidence. But in order to take advantage of the statute in the event the above analysis is correct, it is believed we would be well advised to designate documents in the language of the statute. For this purpose, a stamp reading as follows, could be used:

"For reasons of mational security, this document is specifically designated by the Central Intelligence Agency for limited or restricted dissemination or distribution."



Alternatively, the same result perhaps could be achieved by a regulation which all COMINT (or CRYPTO) cleared people would read; they would also certify to the same. The regulation, in addition to making reference to Section 798, would provide that all COMINT (or CRYPTO) documents will bear a maned code word, or one of a series of code words that the dissemination or distribution of any document bearing any of the code words is limited and restricted by the Central Intelligence Agency for reasons of national security.

## 4. DD/P Pouching System.

The definitions of the terms "code", "cipher" and "cryptographic systems" (see paragraph 2 above) include "any method of secret writing 25X1 and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance or meanings of economications". This would appear broad enough to include not only our

might be well to utilize a regulation along the lines of that mentioned in paragraph 3(b) above.

## 5. Unsuthorized Person.

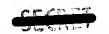
A problem also arises with respect to the definition of "unauthorized person", namely a person or agency not authorized by the President or by the head of an agency designated by the President to engage in communication intelligence activities to receive CRYPTO or COMINT information. By directive, a number of agencies have been designated as the only agencies authorized to engage in COMINT activities. Other agencies of the Government, however (for example, those represented on the USCAB), utilize telecommunications. To the extent, if any, that the activities of any of these agencies require the receipt of information involving CRYPTO or COMINT or CRYPTO or COMINT devices it would appear necessary for the President, or the head of one of the agencies which is authorized to engage in COMINT activities, to authorize that agency and its employees to receive such information.

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